

D.T.E. 98-13A

Investigation pursuant to the Electric Restructuring Act, St. 1997, c. 164, §§ 239, 240 (G.L.

c. 164, §§ 94G, 94G½) by the Department of Telecommunications and Energy, to consider whether granting exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G½ (including fuel charges, performance reviews, and goal-settings) for Boston Edison Company is in the public interest.

APPEARANCES: John M. Fulton, Assistant General Counsel

Boston Edison Company

800 Boylston Street

Boston, Massachusetts 02199

FOR: BOSTON EDISON COMPANY

Respondent

Thomas F. Reilly, Attorney General

By: John M. Grugan, Assistant Attorney General

Joseph W. Rogers, Assistant Attorney General

Regulated Industries Division

Public Protection Bureau

200 Portland Street

Boston, Massachusetts 02114

Intervenor

I. INTRODUCTION

On January 22, 1998, the Department of Telecommunications and Energy ("Department") opened an investigation pursuant to the Electric Industry Restructuring Act ("Restructuring Act"), St. 1997, c. 164, §§ 239, 240 (G.L. c. 164, §§ 94G, 94G½), to consider whether granting exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G½ (including fuel charges, performance reviews and goal-settings) for Boston Edison Company ("BECo" or "Company"), Cambridge Electric Light Company, Commonwealth Electric Company, Eastern Edison Company, Fitchburg Gas and Electric Light Company, Massachusetts Electric Company, Nantucket Electric Company, and Western Massachusetts Electric Company (collectively "Companies") is in the public interest. Notice of §§ 94G and 94G½ Exemptions. The matters were docketed as D.T.E. 98-13A through F. This Order pertains solely to BECo, D.T.E. 98-13A.

Pursuant to the duly issued notice, BECo and the Attorney General of the Commonwealth ("Attorney General") filed written comments. A public hearing was held at the Department's offices on February 10, 1998. The Attorney General intervened as of right pursuant to G.L. c. 12, § 11E. No petitions for leave to intervene were filed in the BECo proceeding.

On February 20, 1998, the Department issued an Order that, in pertinent part, directed the Companies to file by May 1, 1998, for Department approval, a plan for reconciling any over- or under-recovery in their respective fuel charge accounts and a proposal for exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G½ ("February 20, 1998 Order").⁽¹⁾ BECo filed its plan for reconciliation and exemptions on May 1, 1998 ("May 1, 1998 Plan").⁽²⁾

An evidentiary hearing was held at the offices of the Department, on May 13, 1999⁽³⁾ regarding BECo's May 1, 1998 Plan. In support of the May 1, 1998 Plan, BECo sponsored the testimony of one witness: Rose Ann Pelletier, manager in the Power Contracts Department. The evidentiary record consists of three exhibits, two responses to record requests, the sworn testimony of Ms. Pelletier and the May 1, 1998 Plan. The Attorney General filed a brief at the conclusion of the hearings in each of the separate cases. The Company also filed a brief at the conclusion of this proceeding.

II. POSITIONS OF THE PARTIES

A. BECo

According to its May 1, 1998 Plan, BECo has a fuel charge over-recovery of \$38,132,459 (May 1, 1998 Plan, Vol. 1, at 3). A portion of this fuel charge over-recovery, \$32,674,748, is attributable to fuel and purchase power revenues, while \$5,457,711 of this fuel charge over-recovery is attributable to new performance adjustment charge revenues⁽⁴⁾ (id. at 3-4).

BECo requests that its fuel charge over-recovery be returned to its ratepayers by crediting its Standard Offer Stabilization Fund ("SOSF"), a fund accumulating the difference between the revenues BECo bills for Standard Offer Service⁽⁵⁾ and the actual cost of that service (id. at 5). BECo states that it has already credited the fuel charge over-recovery towards the interest bearing SOSF, and therefore, the fuel charge over-recovery balance has been accruing interest (Tr. at 8; RR-DTE-1). BECo further argues that its plan to apply the fuel charge over-recovery to the SOSF provides the following benefits to ratepayers: (1) the SOSF is reduced by the amount of the fuel charge over-recovery; (2) the same customers whose payment created the fuel charge over-recovery receive the benefit of the applied credit; (3) the need for a standard offer rate surcharge is mitigated; and (4) customer rates are stabilized (BECo Brief at 3).

In addition, BECo requests that it be exempted from all applicable provisions of G.L. c. 164, §§ 94G and 94G½ beginning March 1, 1998 (id. at 4). BECo states that, except with respect to actions relating to fuel charges in existence prior to March 1, 1998, there are no provisions of Section 94G or 94G1/2 that would be applicable to BECo (id.).

B. Attorney General

The Attorney General also proposes that the fuel charge over-recovery be returned to ratepayers through the SOSF (Attorney General Brief at 9). The Attorney General does not take issue with the Department granting exemptions from G.L. c. 164, §§ 94G and 94G½ for

goal-settings and performance reviews (id. at 10). However, the Attorney General asserts that such exemptions should not create future limitations on the Department's authority to investigate the procurement of standard offer and default service power (id. at 11).

The Attorney General has raised the issue of NEPOOL reactivation expenses related to a potential power shortage in the summer of 1997 ("reactivation expenses")⁽⁶⁾ incurred by BECo during 1997 (id. at 12). At that time, the Department allowed BECo to recover these expenses through the fuel charge, subject to refund after further investigation (id.). The Attorney General argues that these charges were incurred due to the outages at the Millstone units (id.). Consequently, the Attorney General is questioning the prudence of these expenses and would like this issue to be resolved in BECo's performance review proceeding that covers the time period during which these costs were incurred (id. at 13).

The Attorney General is also concerned that there are several outstanding fuel charge issues that may not have been identified as part of this proceeding (id. at 14). As a result, the Attorney General recommends that the Department should order that BECo compile a list, subject to review, of outstanding fuel charge related issues and have BECo file a plan on how it intends to resolve them (id.).

III. ANALYSIS AND FINDINGS

BECo states that it has a fuel charge over-recovery of \$38,132,459 (May 1, 1998 Plan, Volume 1, at 3). No party in this proceeding disputed the amount of the fuel charge over-recovery. After review of the documentation supporting these figures, the Department finds that \$38,132,459 is the fuel charge over-recovery for BECo. Accordingly, \$38,132,459 shall be returned to ratepayers.

As part of its proposal, BECo has applied the total fuel charge over-recovery to the balance of the SOSF and notes that there would be several benefits to ratepayers resulting from this treatment of the fuel charge over-recovery balance (Tr. at 5; BECo Brief at 3). General Laws c. 164, § 94(b) provides for the recovery of prudently incurred reasonable costs of fuel and purchased power by electric companies through an itemized fuel charge. The SOSF is not related to the cost of fuel. In addition, using the fuel charge over-recovery to partially offset the SOSF would not benefit those customers who contributed to the fuel charge over-recovery but have since left Standard Offer Service. The Department finds that the Company's proposal to partially offset the SOSF is inappropriate. Accordingly, the Department rejects BECo's proposed method of returning the fuel charge over-recovery to ratepayers through a credit to the SOSF.

Consistent with the provisions for over-recovery and intent of G.L. c. 164, § 94G, the Department directs BECo to return the fuel charge over-recovery to ratepayers in the form of a per kilowatthour ("KWH") credit on bills issued pursuant to meter readings for the billing months of October, November, and December 1999. This credit cannot be a part of any rate reduction[s] that are required by the Restructuring Act and shall appear as a line item on each ratepayer's bill. The Department also directs the Company to file by December 15, 1999, a reconciliation for the purpose of implementing any adjustment to the credit amount that may be necessary due to a discrepancy between the forecasted KWH and the actual KWH consumed while the credit is in effect.

Pursuant to Boston Edison Company, D.P.U. 85-1C (1985), the Department directs BECo to apply interest to the fuel charge over-recovery total using an interest rate equal to the prime rate. D.P.U. 85-1C at 14. Interest shall accrue effective March 1, 1998.

Regarding exemptions from the requirements of G.L. c. 164, §§ 94G and 94G½ for goal-settings and performance reviews, no party objected to the Department granting the Company such exemptions. Since BECo has either divested or is in the process of divesting itself of all entitlement interests in generating units, the Department finds that it is in the public interest to grant exemptions from the requirements of G.L. c. 164, §§ 94G and 94G½. These exemptions are effective as of the date that BECo divests its

entitlement interests in each of its generating units. The Department notes that these exemptions do not preclude the Department from future investigations into the procurement of standard offer and default service power.

With respect to the issue of NEPOOL reactivation expenses, the Department allowed BECo to recover these expenses through the fuel charge, subject to refund after further investigation. The Attorney General questions the prudence of these expenses and suggests that this issue should be resolved in BECo's performance review proceeding that covers the time period during which these costs were incurred. The Department agrees with the Attorney General's position since the resolution of this issue is beyond the scope of this proceeding and is more appropriately addressed in the performance review proceeding, which includes an evaluation of the prudence of incurring these costs during the appropriate time period.

Finally, the Attorney General proposes that the Department order each company to file a list of any outstanding fuel charge related issues along with a proposal addressing how to resolve these issues. The Department finds that such an undertaking would be unnecessary as this order effectively resolves all fuel charge related issues for BECo.

IV. ORDER

After due notice, hearing, and consideration, it is

ORDERED: That Boston Edison Company return its fuel charge over-recovery of \$38,132,459 to ratepayers, in the form of a per KWH credit on bills issued pursuant to meter readings for the billing months of October, November, and December 1999, but unless otherwise ordered by the Department, shall not become effective earlier than seven (7) days after it is filed with supporting data demonstrating that such credit complies with this Order; and it is

FURTHER ORDERED: That the fuel charge credit appear as a line item on each ratepayer's bill and shall not be a part of any rate reduction[s] that are required by the Electric Restructuring Act of 1997; and it is

FURTHER ORDERED: That Boston Edison Company file by December 15, 1999, a reconciliation for the purpose of implementing any adjustment to the credit amount that may be necessary due to a discrepancy between the forecasted KWH and the actual KWH consumed while the credit is in effect; and it is

FURTHER ORDERED: That Boston Edison Company apply interest to the fuel charge over-recovery total using an interest rate equal to the prime rate and accruing effective March 1, 1998; and it is

FURTHER ORDERED: That Boston Edison Company is exempted from the goal setting and performance review requirements of G.L. c. 164, §§ 94G and 94G ½, effective as of the date that BECo divests its entitlement interests in each of its generating units; and it is

FURTHER ORDERED: That Boston Edison Company comply with any and all other directives contained in this Order.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

1. The February 20, 1998 Order also (1) exempted the Companies from the fuel charge, (2) authorized the Companies to put into effect an approved fuel charge for bills issued pursuant to meter readings for the billing month of March 1998 for electricity consumed in February 1998, and (3) authorized the Companies' continuance of the Qualifying Facility rate.

2. The Department marks for identification and now admits into evidence the May 1, 1998 Plan.

3. In the interim, the Department clarified the scope of the hearing to be solely exemptions from the requirements of G.L. 164, §§ 94G and 94G 1/2 and not to include a comprehensive audit of the Companies' fuel charges. Interlocutory Order on Appeal of Hearing Officer Ruling, D.T.E. 98-13, at 5-6 (April 16, 1999).

4. The new performance adjustment charge ("NPAC") was a provision of a settlement of a BECo rate case in 1989. Boston Edison Company, D.P.U. 88-28/88-48/89-100 (1989). The NPAC provides BECo with rewards or penalties based on the performance of the Pilgrim nuclear generating station in a variety of categories.

5. Standard Offer Service is the legislatively-mandated provision of electric power to customers at a Department-approved rate, which includes a 10 percent discount for the period March 1, 1998 to August 31, 1999 and a 15 percent discount for the period September 1, 1999 to January 1, 2004, as the electric industry shifts to retail competition.

6. Due to unscheduled outages at certain generating units around New England, including Maine Yankee, Connecticut Yankee and the Millstone units, NEPOOL projected a potential capacity shortfall during the summer of 1997. As a result, NEPOOL ordered all NEPOOL members, including BECo, to reactivate or step up production at any generating units that had been either not operating or running below full capacity. The expenses related to this action were spread across all NEPOOL members.